

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT THOMAS and DONNA THOMAS,

Plaintiffs,

ANSWER

-against-

08 CIV 2374

ECF CASE

ARSENITY S. SERGEYCHIK and POLONEZ
PARCEL SERVICE, INC.

JURY TRIAL DEMANDED

Defendants

-----X

Defendants, ARSENITY S. SERGEYCHIK and POLONEZ PARCEL SERVICE, INC.

by their attorney, LAW OFFICE OF THOMAS K. MOORE, answering the Complaint of
plaintiffs herein, upon information and belief, respectfully alleges:

JURISDICTION AND VENUE

1. Denies each and every allegation contained in the paragraph of the Complaint designated in paragraph "1" of the complaint.
2. Denies each and every allegation contained in the paragraphs of the Complaint designated "2" and "5" and respectfully refers all questions of law to this Honorable Court.
3. Admits each and every allegation contained in paragraphs numbered "3", "4", "6" and "7" of the complaint.

AS AND FOR A FIRST CAUSE OF ACTION

4. Responding to the paragraph of the Complaint designated "8" repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.
5. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph of the Complaint designated "9".

6. Admits each and every allegation contained in paragraphs numbered “10”, “11”, “12” and “13” of the complaint.

7. Denies each and every allegation contained in the paragraph “14”, “17” and “18” of the Complaint designated

8. Denies each and every allegation contained in the paragraphs of the Complaint designated “15” and “16” and respectfully refers all questions of law to this Honorable Court

AS AND FOR A SECOND CAUSE OF ACTION

9. Responding to the paragraph of the Complaint designated “19”, repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.

10. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated “20”.

11. Denies each and every allegation contained in the paragraph of the Complaint designated in paragraphs “21” and “22” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO PLAINTIFF ALLEGED CAUSE OF ACTION, THIS DEFENDANT ARSENITY S. SERGEYCHICK AND POLONEZ PARCEL SERVICE, INC., RESPECTFULLY SET FORTH AND ALLEGES UPON INFORMATION AND BELIEF:

12. The injuries and damages allegedly sustained by plaintiff were caused in whole or in part by the culpable conduct of plaintiff, including negligence and assumption of risk, as a result of which the claim of plaintiff is therefore barred or diminished in the proportion that such culpable conduct of plaintiff bears to the total culpable conduct causing the alleged injuries and damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO PLAINTIFF ALLEGED CAUSE OF ACTION, THIS DEFENDANT ARSENITY S. SERGEYCHICK AND POLONEZ PARCEL SERVICE, INC., RESPECTFULLY SET FORTH AND ALLEGES UPON INFORMATION AND BELIEF:

13. The plaintiff has not sustained a "serious injury" as defined by Insurance Law §5102(d) and accordingly this action is barred as a matter of law.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO PLAINTIFF ALLEGED CAUSE OF ACTION, THIS DEFENDANT ARSENITY S. SERGEYCHICK AND POLONEZ PARCEL SERVICE, INC., RESPECTFULLY SET FORTH AND ALLEGES UPON INFORMATION AND BELIEF:

14. That if plaintiff failed to use safety devices available to plaintiff at the time of the events alleged in the Complaint, then this party will prove, pursuant to law and Spier v. Barker, 35 N.Y.2d 444, that the failure of plaintiff to use such devices was negligence and was a reason and cause in whole or in part of the injuries allegedly sustained by plaintiff.

WHEREFORE, the answering defendant demands judgment:

- (1) Dismissing the complaint;
- (2) For costs, attorneys' fees and disbursements against adverse parties.

Dated: White Plains, New York
May 27, 2008

Yours, etc.,
LAW OFFICE OF THOMAS K. MOORE

By: 
ROULA THEOFANIS (RT-3240)

Attorney for Defendants
ARSENITY S. SERGEYCHICK and
POLONEZ PARCEL SERVICE INC.
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ARSENITY S. SERGEYCHIK and POLONEZ
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Defendants
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**VERIFIED ANSWER
INTERROGATOIRES, DEMAND TO FURNISH SPECIFIED INFORMATION, CROSS
NOTICE TO TAKE DEPOSITION**

LAW OFFICE OF THOMAS K. MOORE
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